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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

TIME WARNER  TELECOM

February 6, 2001

EX PARTE

Magalie Roman Salas
Secretary
Federal Communications Commission
Room TW-A325
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: CC Docket No. 96-98

Dear Ms. Salas:

This letter addresses the proper standard for the so-called carve-out for unbundled local switching ("ULS"). As a provider of facilities-based competitive local switched service in large MSAs throughout the country, Time Warner Telecom has a strong interest in ensuring that the Commission establish a reasonable, predictable, and stable standard for the availability of ULS. In this regard, TWTC urges the Commission to adopt the standard proposed by Allegiance Telecom in its recently filed *ex parte* in the above-referenced proceeding.¹

Although TWTC has previously advocated retaining the existing standard for the ULS carve-out,² as Allegiance explains, that standard may not be sustainable. The alternative proposed by Allegiance should be adopted as the new standard. First, TWTC agrees with Allegiance (and the Commission), that the presence of five providers of local switching in a geographic area provides proof that requesting carriers are not impaired in the absence of ULS. There is no basis for departing from this guideline for the application of the impairment standard to ULS.

Second, the business/residential split is the only sustainable line to be drawn for the ULS carve-out. Attempting to draw the line as to the availability of ULS based on the number of lines

¹ See Letter from Thomas Jones, Counsel for Allegiance Telecom to Ms. Magalie Roman Salas, CC Docket No. 96-98, January 30, 2001 ("Allegiance Letter").

² See Joint Letter from Kevin Joseph, Allegiance Telecom; Lee Schroeder, Cablevision Lightpath, Inc; Julia Strow, Cbeyond Communications; Don Shepherd, Time Warner Telecom; Gerry Salemme, XO Communications to Ms. Magalie Roman Salas, CC Docket No. 96-98, October 25, 2000.

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a customer wishes to order is difficult to administer. In any event, based on the evidence provided by both CLECs and ILECs in this proceeding,³ it seems clear that CLECs use self-deployed switches to serve business customers of all sizes (including those with only one line). It makes sense, therefore for the Commission to take switching off the list of unbundled network elements for all business customers in those areas where five or more providers of local switching are present.

Third, MSAs appear to be the most appropriate geographic unit for the purposes of defining the scope of the ULS carve-out. There is no perfect geographic unit for these purposes. Using small areas, such as local calling areas, would be administratively unworkable, and would not allow new entrants to plan their entry across broad geographic areas. Larger geographic areas can be either over- or under-inclusive. As Allegiance explains, density zones are an extreme example of this problem. *See* Allegiance Letter at 5-7. MSAs, while not perfect, at least have a rational connection to the Commission's regulatory policies (*e.g.*, the adoption of number portability on an MSA-by-MSA basis). In addition, they have been designed by a neutral third party (not the ILECs themselves) based on consistent criteria.

Finally, TWTC supports Allegiance's suggestion that the Commission, to the extent that it remains concerned about the cost and delay associated with collocation and the limitations of EELs, should rely on evidence of widespread CLEC collocation as part of the ULS carve-out standard. If four or more CLECs have established collocation in 50 percent or more of the wire centers in an MSA, the Commission can reasonably conclude that the cost and delay associated with collocation are not major impediments to entry. Of course, a collocation-based standard does not specifically address whether unbundled loops (another entry barrier associated with self-deployed switches) are being provided on adequate terms and conditions. However, evidence of extensive sunk investment by CLECs in switches and collocation throughout an MSA is a reasonable basis for concluding that CLECs in the MSA have determined that unbundled loop provisioning problems (albeit serious) do not prevent them from competing for customers of switched services. In any event, the Commission should address loop provisioning problems through the adoption of strict performance requirements and penalties as well as through enforcement of Section 271.

In this regard, it should be emphasized that Allegiance's collocation-based standard is preferable to the standard proposed by SBC in its July 12, 2000 *ex parte*.⁴ SBC suggests that an ILEC not be required to provide ULS for any business customer in any top 100 MSA in a state in which the ILEC can demonstrate that it provides unbundled loops in accordance with the requirements of Section 251(c)(3). SBC suggests that the Commission conduct Section 271-like proceedings to determine whether an ILEC's performance in providing unbundled loops in a state meets the statutory standard. While TWTC supports the goal of improving the manner in which ILECs provide unbundled loops (as well as special access circuits), it cannot support the

³ *See* Allegiance Letter at 2-4 (describing evidence submitted by Allegiance and ILECs); Letter from Scott Sawyer, Conversent Communications, LLC to Ms. Magalie Roman Salas, CC Docket No. 96-98, January 30, 2001.

⁴ *See* Letter from Gary L. Phillips, SBC Telecommunications, Inc. to Ms. Magalie Roman Salas, CC Docket No. 96-98, July 12, 2000 at 10-11.

mechanism suggested by SBC. Proceedings of the type suggested by SBC are administratively burdensome, costly for CLECs, and do not provide sufficient predictability. The Allegiance proposal has the benefit of being easy to administer and of allowing CLEC sunk investment in switches and collocation to speak for itself. Furthermore, it would be difficult for any CLEC seeking to rely on the UNE-P to plan a business if unbundled switching could be removed at any time based on the type of truncated Section 271 proceeding suggested by SBC. The Allegiance proposal, on the other hand, gives such CLECs a significant period of time to rely on the UNE-P, where available and to plan for its elimination. Nor would it be reasonable to automatically eliminate ULS in any top 100 MSA once the ILEC passes the SBC test. There is no magic to the top 100 MSA classification. Some MSAs in the top 100 may, and probably do, have fewer switches deployed than MSAs outside the top 100. It is more reasonable to limit the scope of the ULS carve-out to those MSAs in which CLECs have actually sunk investment in switches and collocation such that the Commission can be confident that the entry barriers *in the MSA in question* have been adequately lowered for switch-based entry.

Pursuant to Section 1.1206(b)(1) of the Commission's rules, 47 C.F.R. § 1.1206(b)(1), an original and one copy of this letter are being provided for inclusion in the public record of the above-referenced proceedings.

Sincerely,


Don Shephard

Vice President, Federal Regulatory Affairs & Policy
Time Warner Telecom

cc: Dorothy Attwood
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